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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,993	03/04/2002	Stanley G. Wright	01377-0001	8846

7590 01/13/2004

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EXAMINER

COCKS, JOSIAH C

ART UNIT PAPER NUMBER

3749

DATE MAILED: 01/13/2004

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,993

Applicant(s)

WRIGHT, STANLEY G.

Examiner

Josiah C. Cocks

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 is/are allowed.
- 6) ☒ Claim(s) 11-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 10/27/03 is acknowledged.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Rogers* (US # 4,471,757) in view of *Gazille* (US # 5,575,275) and *Truran* (US # 4,280,475).

Rogers discloses in Figures 1-6 a method of burning similar to that described by applicant including a grate (19) for supporting a log wherein the grate includes legs extending downwardly therefrom (see Fig. 3) and an accessory (18) positioned on top of the grate (19), the accessory comprising two parallel elongate members (side members of 18) spaced apart by multiple connecting member (see connecting members on top and bottom of 18 in Figs. 1 and 2). The accessory functions to facilitate the even burning of a log so that substantially all of the log is consumed (see col. 1, lines 12-15). The examiner considers that a person of ordinary skill in the art would reasonably consider that because the accessory functions to cause substantially

Art Unit: 3749

complete combustion of a log, the accessory is causing the log to burn for a longer time than would occur without the accessory.

In regard to claim 11 and the recitation of a synthetic firelog, it is well understood in the art that log supports in fireplaces may be used for both natural wood logs and synthetic logs. *Gazaille* is cited to show a firelog support in the same field of endeavor as *Rogers* wherein *Gazaille* explicitly notes that synthetic logs and ordinary wooden logs are equivalent inflammable materials for use in a fireplace (see *Gazaille*, col. 4, lines 10-14). Therefore, it would be have been obvious to a person of ordinary skill in the art at the time the invention was made that the method of burning a log as disclosed in *Rogers* would be capable of use with a synthetic firelog as taught in *Gazaille* as these inflammable materials are well understood in the art to be equivalent means for generating a flame to be used as a heat source.

Rogers also does not specifically show that the grate (19) includes substantially parallel spaced bars for supporting a log. However, it is well known in the art that fireplaces grates are formed of substantially parallel spaced bars. *Truran* is cited to show this standard grate structure. *Truran* teaches a fireplace grate (10) and accessory in the same field of endeavor as *Rogers* wherein the grate of *Truran* includes parallel spaced bars (see Fig. 5)

Therefore, in regard to claims 11-17, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the grate of *Rogers* to include parallel spaced bars as shown in *Truran* as this structure is recognized in the art as desirable and conventional construction for supporting a log in a fireplace (see *Truran*, col. 2, 16-25).

Allowable Subject Matter

4. Claims 1-10 are allowed.

Response to Arguments

5. Applicant's arguments filed 10/27/03 have been fully considered but they are not persuasive. Applicant argues that the accessory of *Rogers* increases airflow around supported logs and would therefore cause the logs to be burned in a shorter amount of time when using the accessory. However, such an argument is speculation on applicant's part that is not supported by the *Rogers* reference. *Rogers* notes that his accessory desirably functions to produce even burning such that a substantially all of a log will be consumed. The examiner considers that, while an increased airflow will be directed around logs supported on the accessory, the accessory will also function substantially identically to applicant's accessory in providing additional support for a log or firelog such that the log will not break up and fall through the grate. The examiner considers that this additional support will cause a log to burn for a longer period. Applicant also argues that *Rogers* would not be capable of use with a synthetic firelog. As noted above, the *Gazaille* reference is cited to further support the examiner's position that the natural wood logs and synthetic firelogs may be freely substituted for one another.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is

Application/Control Number: 10/090,993

Page 5


Art Unit: 3749

(703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc
January 8, 2004


JOSIAH COCKS
PATENT EXAMINER
ART UNIT 3749